

[COUNSEL LISTED ON SIGNATURE PAGE]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

HUAWEI TECHNOLOGIES CO., LTD., et al.,

Plaintiffs,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

CASE NO. 16-cv-02787-WHO

**STIPULATION AND [PROPOSED]
ORDER OF DISMISSAL, WITHOUT
PREJUDICE, OF HUAWEI'S
SECOND CAUSE OF ACTION FOR
DECLARATORY JUDGMENT OF
FRAND TERMS AND CONDITIONS
FOR CROSS-LICENSE (COUNT II),
PURSUANT TO FRCP 15(a)(2)**

SAMSUNG ELECTRONICS CO., LTD. &
SAMSUNG ELECTRONICS AMERICA, INC.,

Counterclaim-Plaintiffs,

v.

HUAWEI TECHNOLOGIES CO., LTD.,
HUAWEI DEVICE USA, INC., HUAWEI
TECHNOLOGIES USA, INC. & HISILICON
TECHNOLOGIES CO., LTD.,

Counterclaim-Defendants.

Hearing Date: July 18, 2018

Time: 2:00 p.m.

Place: Courtroom 2, 17th Floor

Judge: Hon. William H. Orrick

1 Plaintiffs and Counterclaim-Defendants Huawei Technologies Co., Ltd., Huawei Device
 2 USA, Inc., and Huawei Technologies USA, Inc. (collectively “Huawei”), and Defendants and
 3 Counterclaim-Plaintiffs Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and
 4 Samsung Research America, Inc. (collectively “Samsung”) would like to inform the Court that they
 5 have reached an agreement on a stipulation to dismiss, without prejudice, pursuant to Rule 15(a)(2),
 6 Huawei’s Second Cause of Action seeking a declaration of the terms and conditions for a FRAND
 7 cross-license under the parties’ portfolios of patents essential to the 3GPP UMTS (3G) and LTE
 8 (4G) standards (“Count II”). *See* Dkt. 1 at ¶¶ 61-68 (Second Cause of Action); *id.* at Prayer for
 9 Relief, B.

10 The parties further agree the below stipulation will dispose of Samsung’s pending Motion
 11 for Judgment on the Pleadings Regarding Huawei’s Cause of Action for Declaratory Judgment of
 12 FRAND Terms and Conditions for a Cross-License (Dkt. 303).

13 IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel for the parties
 14 that:

- 15 1. Huawei agrees to dismiss, without prejudice, pursuant to Rule 15(a)(2), Count II of the
 16 Complaint, which sought a declaratory judgment setting the terms and conditions of a
 17 cross-license to the parties’ portfolios of 3G and 4G standard essential patents, and will
 18 not otherwise ask the Court in this action to set the terms and conditions of a cross-
 19 license, or a one-way license, to either parties’ U.S. or global portfolios of 3G and 4G
 20 standard essential patents.
- 21 2. Huawei will not file any action in the U.S. seeking a declaration of the terms and
 22 conditions that would be FRAND for either a one-way or cross license to the parties’
 23 global or U.S. portfolios of SEPs for a period of no less than nine (9) months following
 24 the date of this stipulation
- 25 3. Both parties will reserve their positions regarding what evidence, if any, may be admitted
 26 at trial relating to Huawei’s Count II.
- 27 4. This agreement does not prevent Huawei from seeking admission of evidence or
 28 argument that it offered to submit the parties’ dispute to a third-party arbitrator. Nor

1 does this agreement prevent Samsung from seeking, via motion in limine or otherwise,
2 to exclude evidence or argument that Huawei offered to submit the parties' dispute to a
3 third-party arbitrator, based on Rule 403 or other authority or argument. However,
4 Samsung agrees that it will not reference Huawei's Count II, or the dismissal, without
5 prejudice, thereof, as a basis to support the exclusion of evidence or argument that
6 Huawei offered to submit the parties' dispute to a third-party arbitrator.

1 DATED: July 17, 2018

Respectfully Submitted,

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3 By: /s/ Michael J. Bettinger (with permission) By: /s/ Victoria F. Maroulis

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18 *Attorneys for Huawei Technologies Co., Ltd., Attorneys for Samsung Electronics Co., Ltd.,*
19 *Huawei Device USA, Inc., Huawei* *Samsung Electronics America, Inc., and*
Technologies USA, Inc., and HiSilicon *Samsung Research America, Inc.*
20 *Technologies Co., Ltd.*

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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DATED: _____, 2018

The Honorable William H. Orrick
United States District Court Judge

ATTESTATION

I, Victoria F. Maroulis, am the ECF user whose ID and password are being used to file the above stipulation. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of the document has been obtained from its signatory.

/s/ Victoria F. Maroulis

Victoria F. Maroulis